

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
November 26, 2018 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Paul Keller, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Molly Barnhill, and Kim Kaiser, staff.

MEMBERS ABSENT: None

MINUTES: Upon a motion made by Doris Horn and seconded by Terry Dayvolt the minutes from the regular meeting held on September 24, 2018 meeting and October 22, 2018 were unanimously approved.

BZA-SU-18-14

APPLICANT: Liberty Mine, LLC by Alex Messamore, Manager Land Acquisition and Permits
OWNER: Alcoa Fuels Inc., Alcoa Warrick LLC, H&L Farms LLC, Lackehart, Inc C/O Donald H. Keith, Hart, Hart, Peake & Robertson, Tweedy Farms Trust.

PREMISIS AFFECTED: 2720 acres located on the South side of New Harmony Rd and 796 acres located on the South side of Millersburg Rd approximately 1 mile northwest of the intersection formed by Eskew Rd and Millersburgh Rd. Boon & Ohio Twp.

NATURE OF CASE: Applicant requests a Special Use, SU 13, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an Urban Area in a “CON” Conservancy & Recreational Area and “A” Agricultural Zoning District. *(Advertised in The Standard July 5, 2018) Continued from July 5, 2018, August 24, 2018, September 24, 2018, and October 22, 2018*

Dirk Stahl, Attorney for Ziemer Stayman on behalf of Liberty Mine and John Henderson, Attorney for Stoll, Keenon, and Ogden on behalf of Alcoa were present.

Chairman Valiant called for a staff report.

Mrs. Rector asked if they wanted her to read the staff report again stating nothing had changed in the last four meetings. She said she thought they did have some new information that the

attorneys for Liberty Mine and Alcoa would tell them about and some information from Attorney Doll.

Attorney Stahl stated they had reached an agreement in the form of a Consent Decree that had been agreed to by Alcoa, Liberty, the homeowners group that Charlie was there for represented by Mr. Phillips, as well as the City of Boonville. He said back in June Anthony Long moved to intervene on behalf of H & L Farms LLC, which was a landowner within the footprint of the permit area. He stated that motion was granted last week. He said they had anticipated, he had been part of the discussion peripherally, but obviously the burdens that were contemplated by this agreement don't really fall that much on his clients except to the extent it would limit their ability to extract coal that they own. He stated they were under the understanding that Mr. Long was meeting with his group last Wednesday but they have information, neither John nor he had been able to reach Anthony today; apparently, they were meeting tonight at 5:00. He said they hadn't heard from him since. He stated they had some objection to it but it was something they anticipated being able to work out.

John Henderson stated they might have some objection. He said they heard through intermediaries that there may be some objection but since they hadn't met as a board, they didn't know for sure. He said until they heard back from them, he preferred to be hopeful, that they would agree to what they had. He said he had sent the Consent Decree to Morrie, he didn't know if he had circulated it...

Attorney Doll stated he had not since it was unsigned and they had this unknown.

Attorney Henderson stated everybody had reached an agreement as Dirk said and they hoped that H & L would go along with that but they had not been able to tender it to Judge Heldt yet because they were waiting for that last signature. He said if they don't have that last signature they would do what they had to do to bring them to where they need to be he believed. He stated at this point they still didn't have that total agreement although the progress they had made in the last month had them right at the finish line just not quite there.

Attorney Stahl stated they should also mention in case it was not clear the last last signature, which was Judge Heldt, had also not been secured. He said they needed H & L Farms and they needed to present it to the judge. He stated he thought as long as they could reach an agreement with Anthony's clients the Judge wouldn't have any problems signing it. He said he didn't think they could get there without that. He stated what they were requesting was, he said they sounded like broken records up there, but that they continue this until the next regularly scheduled meeting which they understood was actually the 17th because of Christmas Eve Holiday. He said that gave them a little less than a month but they believed, yet again they had no way to control the other parties, they believed it wasn't overly optimistic to ask for that so they would like to stay on the docket.

Mrs. Rector said she did want to state that there was another application that would be going to that meeting so they wouldn't be just having a meeting for this application the Board would be there anyway. She asked Dirk when you said Charlie was here you meant Charlie...

Attorney Stahl replied Jones, he was sorry.

Mrs. Rector stated they just needed to get it on record.

Attorney Stahl stated they were referring to Save Our Homes....

Charlie Jones stated LLC.

Chairman Valiant asked if December was enough.

Attorney Stahl stated since they were only waiting for one signature other than the Judge they felt like... He said the vast; he didn't know if Attorney Doll had had a chance to read it, the vast bulk of everything was directed to Liberty and Alcoa. He stated it basically... and the City, and Save Our Homes, but they weren't aware of any specific obligation of H & L Farms that they were objecting to. He said they could guess as to what, you know when they are creating a buffer, they were limiting how much coal they could take from the ground and that meant they would have to leave their own coal in the ground. He stated they were surmising that that was part of the issue there. He said as John said they thought they could bring them to the table. He stated they basically knew what they needed to do to work it out.

Chairman Valiant asked Attorney Doll if he had anything to add.

Attorney Doll stated they had a long conversation today among the three of them about the process. He said they had come a long way. He stated he had a 30-page document in his briefcase that indicated all of the negotiations that had went into a Consent Decree. He said what they kept talking about was a Consent Decree, as everyone knew there was a lawsuit and he didn't recollect who filed what, he thought Liberty filed the lawsuit.

Attorney Stahl replied that Liberty and Alcoa filed the lawsuit.

Attorney Doll stated he didn't remember who the plaintiff was. He said Alcoa and Liberty filed the lawsuit seeking a TRO, temporary restraining order, initially, and a preliminary and permanent injunction against the enforcement of an ordinance passed by the City of Boonville. He said that had resulted in an order but that was a form now in which the dispute among all of those various parties had been heard, could be heard, or would be heard at some future date if negotiations failed. He stated this Consent Decree would set forth for the benefit of the Court, which the Court would enter as a Judgement. He said a Decree was a Judgement binding all of the parties to their negotiated agreement. He stated that would be what they would have to live with. He said it would also mean that those agreements about settlements, blastings, setbacks, or whatever it may be that was in the 30-page document that was waiting for one party signature and then the Judge's signature. He stated that would mean that any dispute over whether those promises were kept would not come back to the Board as a violation complaint instead the exclusive remedy would be in the Courts, if he recalled correctly.

Attorney Henderson said yes it was.

Attorney Doll stated if there was a future dispute about some technical aspect of what all of those promises meant it wouldn't come back to the BZA to be determined if it was a violation. He said it would go to Special Judge Heldt in this case or his replacement at some future date who would hear evidence, make a determination, and order certain people to do certain things if he felt it was necessary. He said he recommended to the Board that they give them this additional amount of time. He stated he knew they were frustrated, he knew they wanted it done, it had been on the docket since July but there were a lot of moving parts to this. He said there really was. He stated there were Federal Regulations compelling the State to do certain things, which overlay the Board's ability to deal with this. He said the Board should remember they only had very limited authority, courtesy of the Indiana General Assembly, only in two categories if it contained a flood plain or it had an urban area. He stated those are the only reason the Board would have jurisdiction whatsoever or otherwise they wouldn't be there tonight. He said his recommendation to them as their counsel having heard all of the facts, know where they were, know what was going on, and know how it would be enforced in the future would be to continue it to the December 17, 2018 meeting and hope that they got H & L Farms LLC on board. He stated if they weren't there on the 17th the Board would have to see where they were. He said it was the right thing to do. He stated the Board needed to hear this application. He stated it seemed to meet the needs of the home owners, seemed to be meeting the needs of the Town of Boonville, Alcoa needed the energy, and Liberty was in the business of mining coal so he thought the Board should give them more latitude to try to get to that finish line. He said it was like running a race and they were at the very end and couldn't quit get across the finish line. He stated that was where they were.

Chairman Valiant stated someone kept moving it.

Attorney Doll replied yes. He said this Board had previously dealt with Anthony in some cases. He stated his recommendation to the Board would be to, by motion; continue this until December 17, 2018 hearing to give them an opportunity to finalize it. He said he thought Sherri agreed.

Mrs. Rector stated yes, she did.

Mike Winge stated he made a motion to continue this until December 17, 2018. The motion was seconded by Terry Dayvolt and unanimously approved.

Attorney Stahl stated the Consent Decree was voted on by the Boonville Council so it was public record. He said feel free to share it around.

Attorney Doll replied thank you. He said he would leave that copy with Sherri.

Mrs. Rector stated she would scan it and email it.

ATTORNEY BUSINESS: None

EXECUTIVE DIRECTOR BUSINESS: None

Mike Moesner asked her to give a report on her office.

Mrs. Rector stated it was cold. She said they had hanging lights, temporary lights. She stated they said that they might have heat by maybe December 7th or the next week.

Terry Dayvolt made a motion to adjourn the meeting at 6:15 p.m. The second was made by Mike Winge and passed unanimously.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held November 26, 2018.

Sherri Rector, Executive Director